

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

RECEIVED

OCT 24 1996

Federal Communications Commission
Office of Secretary

In the Matter of

Revision of the Commission's Rules
To Ensure Compatibility with
Enhanced 911 Emergency Calling Systems

)
)
)
)
)

CC Docket No. 94-102
RM-8143

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY TO OPPOSITIONS AND COMMENTS
ON PETITION FOR PARTIAL RECONSIDERATION
OF AMERITECH

Ameritech Corporation (Ameritech), by its attorneys, respectfully submits this Reply to the Oppositions and Comments filed in response to Ameritech's Petition for Partial Reconsideration of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, FCC 96-264, released July 26, 1996 (Report and Order and Further Notice of Proposed Rulemaking) [hereinafter Report and Order].¹ Oppositions and Comments were filed by the City of Chicago (Chicago); the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc. and the National Association of State Nine One One Administrators (collectively, the Public Safety Associations); the Texas Advisory Commission on State Emergency Communications (TX-ACSEC); Ad Hoc Alliance for 911 (Alliance); and KSI Inc. and MULOC Inc. (collectively, KSI).

As a threshold matter, Ameritech notes that no parties opposed Ameritech's requests that the Commission: (a) define the terms "appropriate PSAP" and "designated PSAP"; and (b) absolve covered carriers from any requirements or liability concerning handset-based locking mechanisms. With no parties opposing these requests, it is respectfully submitted that the Commission should grant them.

Ameritech's four other requests were opposed in some fashion by various parties. These four requests were for the Commission to: (a) eliminate the requirement to

¹ This reply is being filed on this date pursuant to Section 1.429 of the Commission's Rules, which requires replies to be filed 10 days after oppositions were due, and Section 1.4, pursuant to which an additional 3 days (excluding holidays) is provided when service of the oppositions was made by mail.

specifically provide longitude and latitude information; (b) eliminate the requirement to process non-code identification calls; (c) establish guidelines for resolving carrier liability issues; and (d) allow all parties involved in the provision of E911 services to participate in the recovery of costs. The oppositions to these requests advocate requirements that would expose Ameritech to undue liability and unreasonable costs, which otherwise could be controlled if the Commission were to grant Ameritech's requests.

I. The Commission Should Allow the Use of Measurement Standards Other Than Longitude and Latitude

In its Petition for Partial Reconsideration, Ameritech requested the Commission to modify Section 20.18(e) to permit carriers to provide location information using standards of measurement other than longitude and latitude.² The Telecommunications Industry Association (TIA) also made the same request. TIA suggested that Universal Transverse Mercator (UTM) coordinates could be used, because they do not have the disadvantages of longitude coordinates which get closer together as the latitude moves away from the equator.³

KSI, however, requests the Commission to retain the current rule, and require carriers to use only longitude and latitude measurements.⁴ However, longitude and latitude measurements, while excellent for sailing from New York to London, may not be the most suitable for emergency telecommunications purposes which operate over relatively small areas. On a map, small areas are depicted as a plane, thus plane coordinates (e.g., state plane coordinate systems (SPCS)) may be more appropriate in some areas. Additionally, UTM and longitude/latitude coordinates may be more suitable when using GPS receivers

² Ameritech Petition at 6.

³ TIA Petition at 19-20.

⁴ KSI Opposition at 7-9.

that support those coordinate systems.⁵ Furthermore, testing to determine which coordinate system is best for emergency services is now being sponsored by CTIA.⁶

Due to the comparative advantages and disadvantages of each coordinate system, and CTIA's ongoing research of this topic, Ameritech reiterates its request for the Commission to permit flexibility in the choice of measurement standards. As long as one base map system is agreed upon by all parties involved in the provision of wireless E911 service, SPCS, longitude/latitude, or UTM may be used, and computer software can translate among the systems, as needed.

II. The Commission Should Not Require Covered Carriers to Transmit Non-Code Identification E911 Calls

Ameritech opposed the Commission's requirement for subject licensees to transmit non-code identification E911 calls where requested by authorized or designated PSAPs.⁷ Bell Atlantic NYNEX Mobile, Inc., PrimeCo Personal Communications, L.P., XYPOINT Corporation, Nextel Communications, Inc., Nokia Telecommunications, Inc. and CTIA also filed petitions opposing this requirement.⁸ However, the Public Safety Associations and Alliance want the Commission to retain the requirement for the PSAPs to have the option of requesting the delivery of non-code identification calls.⁹

The Public Safety Associations concede that some of their members want to receive all calls and some do not want any non-code identification calls.¹⁰ They assert that the key

⁵ S. Robert Miller & Neri G. Terry, What's My Address?, NENANEWS, June 1996, at 20.

⁶ See id. at 22.

⁷ Ameritech Petition at 7.

⁸ Bell Atlantic NYNEX Mobile, Inc. Petition at 4; PrimeCo Personal Communications, L.P. Petition at 2-4; XYPOINT Corporation Petition at 3-6; Nextel Communications, Inc. Petition at 3-6; Nokia Telecommunications, Inc. Petition at 2; CTIA Petition at 3-12.

⁹ Public Safety Associations Opposition at 2-3.

¹⁰ Id. at 2.

issue in determining whether to require non-code identification calls to be transmitted is whether callback is possible.¹¹ However, even if that problem were resolved in the future, as suggested by the Public Safety Associations,¹² there are other drawbacks to transmitting non-code identification calls. As stated by Ameritech, by permitting non-code identification E911 calls, the Commission would facilitate prank calls and fraudulent calls, carriers would have no way of limiting their liability for any errors that occur in their processing of such calls, and carriers will not be able to recover the cost of processing non-code identification calls from the users.¹³

Alliance incorrectly asserts that Ameritech's concern that 911 calls can be patched through by a PSAP operator as a wireline call, is based on its concern about profits.¹⁴ Nothing could be further from the truth. As Ameritech stated in its Petition, Ameritech is concerned that such calls can tie up the PSAP, prohibiting legitimate calls from reaching the PSAP.¹⁵

Alliance also opposes Ameritech's concern that it would not be able to recover its costs from non-code identification users of E911 services.¹⁶ Alliance's assertion that the E911 system would be "set up and paid for by the public" is premature. Cost recovery mechanisms are yet to be established. Additionally, Alliance's repeated assertion that the wireless industry has free use of the airwaves ignores the fact that this proceeding affects PCS licensees who have paid tremendous amounts for the spectrum they will be using. For these reasons, the Commission should deny Alliance's assertions.

¹¹ Id.

¹² Id.

¹³ Ameritech Petition at 8-10.

¹⁴ Alliance Opposition at 5.

¹⁵ Alliance's other assertion that if a user makes repeated 911 calls, the carrier could locate the user through triangulation, is without merit. Alliance Opposition at 4. If the carrier could use triangulation to locate prank callers, the carrier could use triangulation to locate any caller, and much of this proceeding would be moot.

¹⁶ Alliance Opposition at 7.

Because the issues of prank calls, carrier liability and cost recovery are unresolved and there is wide-ranging support for the elimination of the requirement to process non-code identification calls, the Commission should grant the requests of Ameritech and seven other petitioners, and modify Section 20.18(b) so that carriers would not be required to process non-code identification calls. If in the future these problems are overcome, the matter can be revisited.

III. The Commission Should Lead the Way in Resolving Carrier Liability Issues

In its Petition for Partial Reconsideration, Ameritech requested the Commission to provide limitation of liability protection.¹⁷ Alternatively, Ameritech suggested that the Commission could: (a) make the E911 service deployment obligation contingent upon public safety organizations indemnifying carriers; or (b) establish guidelines for liability limitations and encourage regional public safety planning groups to work with the states to adopt such limitations.¹⁸

However, the Public Safety Associations assert that state law concerning wireline 911 operations provides substantial protection against privacy and ordinary negligence claims of most callers.¹⁹ The Public Safety Associations notably did not cite to the allegedly applicable laws in all 50 states, nor could they. Based on Ameritech's research of a random selection of state codes and administrative regulations, it appears that many states do not have specific laws limiting the liability of entities involved in the provision of 911 services.²⁰ Where states have adopted liability protection, it usually applies to the governmental or public safety employees, not to the telephone company, and if the telephone company is

¹⁷ Ameritech Petition at 10. Alliance supports Ameritech's statement that contracts with subscribers are not sufficient to limit their liability. Alliance Opposition at 7.

¹⁸ Ameritech Petition at 10.

¹⁹ Public Safety Associations Comments at 3.

²⁰ See also XYPOINT, XYPOINT Study Says Carriers Face Liability on Enhanced 9-1-1 Issue; 50-State Analysis Shows Legislative Improvement Needed <<http://www.xypoint.com>>.

mentioned, it is likely that the law applies to wireline telephone companies and not to the wireless carriers that are the subject of this proceeding. See, e.g., Fla. Stat. ch. 365.171(14) (1995) (limiting liability for the "telephone company" and permitting local governments to indemnify the "telephone company" in accordance with the "telephone company's lawfully filed tariffs"). In sum, existing state laws do not currently provide adequate protection against liability.

TX-ACSEC asserts that a Texas court has held that wireless carriers are covered by the same broad statutory limitation of liability protections as those afforded wireline carriers.²¹ But TX-ACSEC admits that it is unsure about that holding. It therefore has requested the state legislature to clarify that 911 limitation of liability provisions apply to all telecommunications service providers.²² Thus, TX-ACSEC proves Ameritech's point: Action needs to be taken by the Commission, or the states, to ensure that wireless carriers are exempt from liability. And even if the Texas legislature were to determine that wireless carriers have liability protection, that is of no consequence to Ameritech and other wireless carriers that provide service in the other 49 states.

The Public Safety Associations and TX-ACSEC also object to Ameritech's and U S WEST's suggestion that the public safety organizations indemnify carriers.²³ The Public Safety Associations' objection is based on the misunderstanding that public safety organizations would somehow "unwittingly" indemnify carriers.²⁴ Ameritech's proposal was for the Commission to require public safety organizations to enter into indemnification agreements with wireless carriers as a prerequisite to their receiving E911 calls from wireless carriers. Public safety organizations therefore would not "unwittingly" provide indemnity; rather, they would be full participants in drafting the indemnification agreements.

²¹ TX-ACSEC Opposition at 4.

²² Id. at 5.

²³ Public Safety Associations Opposition at 3; TX-ACSEC Opposition at 4 n.2.

²⁴ Public Safety Associations Opposition at 3.

TX-ACSEC asserts that PSAPs in certain states may not have the legal authority to hold carriers harmless contractually.²⁵ If that is true and if the Commission were to pursue Ameritech's and U S WEST's suggestion to have public safety organizations indemnify the wireless carriers, Ameritech suggests that the Commission could encourage regional public safety planning groups to work with the states to develop the necessary framework for the proposed indemnification agreements.

In sum, no parties have disproved the need for liability protection, whether provided by the Commission, through indemnification agreements, or through laws developed at the state level. Ameritech reiterates its request for the Commission to adopt one of these alternative solutions.

IV. All Entities Involved in the Provision of E911 Services Should Be Allowed to Participate in Recovering Costs

Ameritech requested the Commission to allow all parties involved in the provision of E911 -- including wireless carriers, wireline local exchange carriers and PSAPs -- to participate in the recovery of their own costs in implementing the Commission's E911 rules.²⁶

Chicago supports Ameritech's request to the extent that it would allow PSAPs to recover their costs.²⁷ However, Chicago requests the Commission to clarify whether wireless carriers are free to build their own facilities to provide E911 services and/or purchase elements of the wireline network on an unbundled basis.²⁸

The Commission should not respond to Chicago's request because there is simply nothing to "clarify." First, nothing in the proposed rules would deny wireless carriers, or any other class of carriers, the right to select, configure, provide or procure from others, the

²⁵ TX-ACSEC Opposition at 4 n.2.

²⁶ Ameritech Petition at 16.

²⁷ Chicago Opposition at 2.

²⁸ Id. at 3.

facilities used to provide 911 services. Second, the question of access to unbundled network elements has been treated and resolved by the Commission in its proceeding to implement the local exchange competition provisions of the Telecommunications Act of 1996.²⁹ Thus, all aspects of the issue on which Chicago seeks "clarification" have been dealt with on a full and complete record; moreover, Chicago offers no additional information or argument to change this fact.

It is worthy of note, however, that Chicago's suggestion as to funding would circumvent a provision of the industry Consensus Agreement discussed by the Commission in the Report and Order. Specifically, Chicago's suggestion that wireline carriers "simply charge the wireless carriers directly (and) (t)hese cost-based charges would then be recovered by the wireless carriers through their rates"³⁰ would burden the customers of wireless carriers with the full cost recovery for E911 services, thus contravening the Consensus Agreement's proposal that E911 fees or taxes "should not discriminate between wireline and wireless carriers."³¹

Chicago also asserts that if wireless carriers were to use wireline carriers to transmit calls to PSAPs, the wireline carriers should charge the wireless carriers directly, rather than using the state and local funding mechanisms.³² This proposal would saddle the wireless carriers with the costs of upgrading the wireline networks to support wireless E911 services. Neither the wireless carriers nor the wireline carriers should be forced to pay for the wireline network upgrades. Cost recovery for all entities involved in the provision of E911

²⁹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dockets No. 96-98, 95-185, First Report and Order, FCC 96-325, rel. Aug. 8, 1996. In that matter, incumbent LECs were given the duty to provide unbundled access to network elements at any technically feasible point, see 47 C.F.R. § 51.307(a), and the states were given the duty to determine issues of technical feasibility, see 47 C.F.R. § 51.317(a).

³⁰ Chicago Opposition at 3.

³¹ Report and Order, Appendix D, at 2, Table B - "Other Proposals."

³² Chicago Opposition at 3.

services should be determined by state and local governments, and may involve the establishment of special funds, tax incentives, or financial accounting conditions.

TX-ACSEC asserts that LEC switch upgrades necessary to support wireless E911 services may be necessary to accommodate other changes in the local telecommunications environment, and should be addressed by state public utility commissions.³³ Ameritech objects to this suggestion only to the extent that it may imply that the Commission should require state public utility commissions to consider the factors described by TX-ACSEC. Such a requirement could delay the provision of wireless E911 services as each of the 50 state public utility commissions would need to investigate the switch capabilities of the 1300 local exchange carriers and the capabilities of associated software features that may not have been planned yet by their switch manufacturers. The Commission should not mandate that state and local governments engage in such in-depth investigations. State and local governments should have the prerogative to determine how to go about establishing the funding mechanisms.

In sum, state and local governments should be permitted to determine cost recovery mechanisms for all entities involved in the provision of E911 services.

Conclusion

Ameritech supports the Commission's efforts to improve the provision of emergency services in the interest of public safety. Ameritech's requests for the Commission to: (a) define the terms "appropriate PSAP" and "designated PSAP"; and (b) absolve covered carriers from any requirements or liability concerning handset-based locking mechanisms, were unopposed and should therefore be granted.

Ameritech also reiterates its other four requests. First, Ameritech requests the Commission to eliminate the requirement for carriers to transmit non-code identification calls, because the issues concerning callback, prank calls, liability and cost recovery for

³³ TX-ACSEC Opposition at 8-9.

non-code identification calls have not been resolved. Second, because state laws do not adequately protect wireless carriers from liability, Ameritech requests the Commission to establish guidelines for resolving carrier liability issues, require public safety organizations to indemnify the carriers, or make the requirement for a carrier to comply with the rules contingent on whether the corresponding state has absolved carriers from liability. Third, Ameritech requests the Commission to eliminate the requirement to specifically provide longitude and latitude information, because such technical issues should be left to the industry. Finally, Ameritech requests the Commission to permit all parties involved in the provision of E911 to participate in the recovery of costs, so that no party is saddled with the costs of supporting wireless E911 services.

Respectfully submitted,
AMERITECH CORPORATION

Frank M. Panek P.P.

Frank Michael Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60195-5000
(847) 248-6064

By

John Prendergast

John Prendergast
Susan J. Bahr
Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, NW
Washington, DC 20037
(202) 659-0830

Counsel to Ameritech

October 23, 1996

CERTIFICATE OF SERVICE

I, Susan J. Bahr, an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens, certify that on this 23rd day of October, 1996, I caused to be mailed by first class U.S. mail, postage prepaid, a copy of the foregoing Reply to the following:

James R. Hobson
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue - Suite 750
Washington, DC 20005-3934

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane, Chtd.
1666 K Street, NW - Suite 1100
Washington, DC 20006

Charles J. Hinkle, Jr.
KSI Inc.
MULOC Inc.
7630 Little River Turnpike
Suite 212
Annandale, VA 22003

Robert B. Kelly
W. Ashby Beal, Jr.
Kelly & Povich, P.C.
1101 30th Street, NW - Suite 300
Washington, DC 20007

Richard A. Muscat
Assistant Attorney General
Public Agency Representation Section
Office of the Attorney General
State of Texas
P.O. Box 12548 - Capitol Station
Austin, TX 78711-2548

Susan Sher
Corporation Counsel
City of Chicago
30 North LaSalle Street, Suite 900
Chicago, IL 60602

Samuel Simon
901 15th Street, NW - Suite 230
Washington, DC 20005


Susan J. Bahr